

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUN 03 1988

REPLY TO: 6W-PS

Mr. Edward Kennedy
Director of Environmental
Affairs
Homestake Mining Company
P.O. Box 98
Grants, NM 87020

Re: NPDES Permit No. NM0020389 - Homestake Mining Company of California

Dear Mr. Kennedy:

The application for your expiring National Pollutant Discharge Elimination System (NPDES) permit was recently received in this office. In accordance with the Environmental Permit Regulations, (40 CFR 124.3(c), 48 FR 14153, April 1, 1983) your application has been reviewed and determined to be administratively complete. Please note that at the time your permit is processed for reissuance, we may request additional information including effluent testing.

All permits are issued in accordance with Federal and State priorities for water pollution abatement. Therefore, it is possible that the processing of this application for your expiring permit may take some time depending on the relative priority of the discharge in comparison to all others. During the interim, you should continue to meet your existing permit requirements until such time as a new permit is issued.

Thank you for your cooperation. If you have any questions concerning your submittal, please contact Ms. Susan Johnson at the above address or telephone (214) 655-7190.

Sincerely yours,



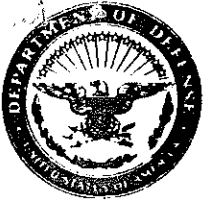
Jayne Fontenot
Chief

Permits Issuance Section (6W-PS)

cc: New Mexico Environmental
Improvement Division

7 5-31-88

CONCURRENCES				
SYMBOL	6W-PS:JOHNSON:dh:x7190:5/27/88	Dis #1-32:729		
SURNAME				
DATE				



DEPARTMENT OF THE ARMY
ALBUQUERQUE DISTRICT, CORPS OF ENGINEERS
P. O. BOX 1580
ALBUQUERQUE, NEW MEXICO 87103-1580

REPLY TO
ATTENTION OF:

June 2, 1988

Construction-Operations Division
Regulatory Branch

Ms. Ellen Caldwell
Permits Branch (6W-PS)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733

Dear Ms. Caldwell:

This is in response to your request for an evaluation of the impact that the discharge described in the following permit applications will have on anchorage and/or navigation.

<u>Applicant</u>	<u>Application Number</u>
Homestake Mining Company	NM0020389
Bakum Resources Corporation	NM0028215
Molycorp, Inc.	NM0022306
Quivira Mining Company	NM0020532
Quivira Mining Company	NM0028207
Uranium King Corporation	NM0028169
City of Santa Fe	NM0022292
Mesilla Valley Enterprises	NM0029769
Twining Water & Sanitation District	NM0022101

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6W-PS

The receiving waters are not subject to navigation. If the proposed work involves discharges of dredged or fill material into waters of the United States, a Department of the Army permit under Section 404 of the Clean Water Act may be required. The work may be permitted by the nationwide permit for utility lines including outfall and intake structures (33 CFR 330.5 (a)(7)) provided the applicant complies with all permit conditions. A summary of the provisions of this nationwide permit is enclosed. Activities which are not authorized by the nationwide permit may require an individual permit.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert E. Meehan". The signature is fluid and cursive, with the first name "Robert" and last name "Meehan" clearly distinguishable.

Robert E. Meehan, P.E.

Chief, Construction-Operations Division

Enclosure

Hamke

HOMESTAKE MINING COMPANY

P.O. BOX 98
GRANTS, NEW MEXICO
87020

May 2, 1988

CERTIFIED MAIL: P 562 229 569

Ms. Jayne Fontenot, Chief
Permits Insurance Section (6W-PS)
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Dallas, Texas 75202

Re: NPDES Permit No. NM 0020389
Homestake Mining Company of California

Dear Ms. Fontenot:

Pursuant to your letter of April 20, 1988, please find enclosed the original signature pages of forms 1 and 2C for the above referenced Permit.

If you have any further comments or questions, please don't hesitate to contact me.

Very truly yours,

HOMESTAKE MINING COMPANY

Edward E. Kennedy

Edward E. Kennedy
Director of Environmental Affairs

EEK/bgl

Enclosures:

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MAY 4 1988

6W-PS

Homke

HOMESTAKE MINING COMPANY

P.O. BOX 98
GRANTS, NEW MEXICO
87020

May 2, 1988

CERTIFIED MAIL: P 562 229 569

Ms. Jayne Fontenot, Chief
Permits Insurance Section (6W-PS)
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Dallas, Texas 75202

Re: NPDES Permit No. NM 0020389
Homestake Mining Company of California

Dear Ms. Fontenot:

Pursuant to your letter of April 20, 1988, please find enclosed the original signature pages of forms 1 and 2C for the above referenced Permit.

If you have any further comments or questions, please don't hesitate to contact me.

Very truly yours,

HOMESTAKE MINING COMPANY

Edward E. Kennedy

Edward E. Kennedy
Director of Environmental Affairs

EEK/bg1

Enclosures:

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MAY 4 1988

6W-PS

FORM
1
GENERAL



U.S. ENVIRONMENTAL PROTECTION AGENCY

GENERAL INFORMATION

Consolidated Permits Program
(Read the "General Instructions" before starting.)

EPA I.D. NUMBER

F 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15

GENERAL INSTRUCTIONS

If a preprinted label has been provided, affix it in the designated space. Review the information carefully; if any of it is incorrect, cross through it and enter the correct data in the appropriate fill-in area below. Also, if any of the preprinted data is absent (the area to the left of the label space lists the information that should appear), please provide it in the proper fill-in area(s) below. If the label is complete and correct, you need not complete items I, III, V, and VI (except VI-B which must be completed regardless). Complete all items if no label has been provided. Refer to the instructions for detailed item descriptions and for the legal authorizations under which this data is collected.

EPA No. - NPDES Permit No. NM-0020389

Homestake Mining Company
P.O. Box 98
Grants, New Mexico 87020

Facility Location:
North Highway 53
Grants, New Mexico 87020

II. POLLUTANT CHARACTERISTICS

INSTRUCTIONS: Complete A through J to determine whether you need to submit any permit application forms to the EPA. If you answer "yes" to any questions, you must submit this form and the supplemental form listed in the parenthesis following the question. Mark "X" in the box in the third column if the supplemental form is attached. If you answer "no" to each question, you need not submit any of these forms. You may answer "no" if your activity is excluded from permit requirements; see Section C of the instructions. See also, Section D of the instructions for definitions of bold-faced terms.

SPECIFIC QUESTIONS	MARK 'X'			SPECIFIC QUESTIONS	MARK 'X'		
	YES	NO	FORM ATTACHED		YES	NO	FORM ATTACHED
A. Is this facility a publicly owned treatment works which results in a discharge to waters of the U.S.? (FORM 2A)		X		B. Does or will this facility (either existing or proposed) include a concentrated animal feeding operation or aquatic animal production facility which results in a discharge to waters of the U.S.? (FORM 2B)		X	
C. Is this a facility which currently results in discharges to waters of the U.S. other than those described in A or B above? (FORM 2C)	X			D. Is this a proposed facility (other than those described in A or B above) which will result in a discharge to waters of the U.S.? (FORM 2D)		X	
E. Does or will this facility treat, store, or dispose of hazardous wastes? (FORM 3)		X		F. Do you or will you inject at this facility industrial or municipal effluent below the lowermost stratum containing, within one quarter mile of the well bore, underground sources of drinking water? (FORM 4)		X	
G. Do you or will you inject at this facility any produced water or other fluids which are brought to the surface in connection with conventional oil or natural gas production, inject fluids used for enhanced recovery of oil or natural gas, or inject fluids for storage of liquid hydrocarbons? (FORM 4)		X		H. Do you or will you inject at this facility fluids for special processes such as mining of sulfur by the Frasch process, solution mining of minerals, in situ combustion of fossil fuel, or recovery of geothermal energy? (FORM 4)		X	
I. Is this facility a proposed stationary source which is one of the 28 industrial categories listed in the instructions and which will potentially emit 100 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X		J. Is this facility a proposed stationary source which is NOT one of the 28 industrial categories listed in the instructions and which will potentially emit 250 tons per year of any air pollutant regulated under the Clean Air Act and may affect or be located in an attainment area? (FORM 5)		X	

III. NAME OF FACILITY

1 SKIP HOMESTAKE MINING COMPANY OF CALIFORNIA

IV. FACILITY CONTACT

A. NAME & TITLE (last, first, & title)		B. PHONE (area code & no.)	
2 EDWARD KENNEDY, DIR. ENV. AFFAIRS	505 287 4456		

V. FACILITY MAILING ADDRESS

A. STREET OR P.O. BOX		B. CITY OR TOWN		C. STATE	D. ZIP CODE
3 P O BOX 98		GRANTS	NM	87020	

VI. FACILITY LOCATION

A. STREET, ROUTE NO. OR OTHER SPECIFIC IDENTIFIER		B. COUNTY NAME		C. CITY OR TOWN	D. STATE	E. ZIP CODE	F. COUNTY CODE (if known)
5 SAN MATEO ROAD		MCKINLEY			NM	NA	

VII. BIOLOGICAL TOXICITY TESTING DATA

Do you have any knowledge or reason to believe that any biological test for acute or chronic toxicity has been made on any of your discharges or on a receiving water in relation to your discharge within the last 3 years?

☐ YES (identify the test(s) and describe their purposes below)

☒ NO (go to Section VIII)

VIII. CONTRACT ANALYSIS INFORMATION

Were any of the analyses reported in Item V performed by a contract laboratory or consulting firm?

☐ YES (list the name, address, and telephone number of, and pollutants analyzed by, each such laboratory or firm below)

☐ NO (go to Section IX)

A. NAME	B. ADDRESS	C. TELEPHONE (area code & no.)	D. POLLUTANTS ANALYZED (list)
NUS Corporation	900 Gemini Avenue Houston, Texas 77058	(713)488-1810	Those parameters identified as having only one (1) analyses.

IX. CERTIFICATION

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

A. NAME & OFFICIAL TITLE (type or print)

Thomas G. White, General Manager

B. PHONE NO. (area code & no.)

(505) 287-4456

C. SIGNATURE



D. DATE SIGNED

5-2-88

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

APR 20 1988

REPLY TO: 6W-PS

Mr. Edward E. Kennedy
Director of Environmental Affairs
Homestake Mining Co. of California
P.O. Box 98
Grants, New Mexico 87020

Re: NPDES Permit No. NM0020389 - Homestake Mining Co. of California


Dear Mr. Kennedy:

The application for your expiring National Pollutant Discharge Elimination System (NPDES) permit was received on March 21, 1988. As in accordance with Part 124.3(c) of the Consolidated Permit Regulations which were published in the Federal Register on April 1, 1983, this application has been reviewed and it is determined to be incomplete. The following information is necessary for you to submit in order for us to start to process your permit:

Permit application (Forms 1 and 2C) must have original signature.

Thank you for your cooperation. If you have any questions concerning this submittal, please contact Ms. Jenaie Slaven at the above address or telephone (214) 655-7190.

Sincerely yours,


Jayne Fontenot
Chief

Permits Issuance Section (6W-PS)

cc: New Mexico Environmental Improvement Division

6W-PS:SJOHNSON:wt:x7190:4/4/88:Disk WT-25:#4:581

CONCURRENCES

HOMESTAKE MINING COMPANY

P.O. BOX 98
GRANTS, NEW MEXICO
87020

March 18, 1988

CERTIFIED MAIL: P 562 229 542

Humke
exp 8-14-88

Mr. Fred Humke
Industrial Permits Section (6 AEWP)
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Dallas, Texas 75202-2733

Re: NPDES Permit No. NM-0020389
Homestake Mining Company of California

Dear Mr. Humke:

Attached pursuant to our discussions of February 9, 1988 and the requirements of the Clean Water Act-NPDES provisions, please find attached Homestake Mining Company of California's (Homestake) Application for Renewal of the above identified NPDES permit.

As I indicated to you by phone, Homestake has ceased discharging from their 001 discharge and is recycling all their mine discharge waters at this point in time. However, Homestake would like to have their Permit renewed, in the event it is decided that the discharge should become necessary again.

Included with this letter is Homestake's Renewal Application, the Form 2C-Wastewater Discharge Information and a copy of a letter of authority from Homestake's Vice-President, Mine Operations (the signed original of which should arrive shortly at your office). Since Homestake has ceased discharging from their 001 discharge, the Form 2C is a copy of the analytical information of the effluent when it was operational. Should discharge be again found to be necessary, the water quality should not be found to be significantly different than that shown in the attached Form 2C.

RECEIVED

MAR 21 1988

6W-PS

Mr. Fred Humke - U.S. Environmental Protection Agency
Clean Water Act - Permit Renewal
Page 2

If you have any comments or questions concerning the contents
of this Renewal Application, please don't hesitate to contact me.

Very truly yours,

HOMESTAKE MINING COMPANY



Edward E. Kennedy
Director of Environmental
Affairs

EEK/bgl

xc: T.G. White
D.B. Crouch

DATE: 3-22-88

NPDES # NM0020389

SUBJECT: EXPIRING PERMIT

FROM: *Susan Johnson*
JAYNE WATSON
CHIEF

1) Hunke
2) Johnson

EXPIRATION DATE 8-14-88

DATE APP REC'D 3-21-88

PERMITS ISSUANCE SECTION (6W-PS)

TO: KENNETH HUFFMAN (6W-PI)

The attached application is for the expiring NPDES permit reference above..

As in accordance with the new consolidated regulations, a completeness review is required and a response must be given to the applicant within 60 days from the receipt of this application.

In order to meet the 60-day response time, please follow the below timetable as possible. Hopefully, this will allow sufficient time to review and make your determination whether the application is complete. If other time is necessary, please advise 6W-PS as soon as

COMPLETED INITIALS
DATE

ARBOX

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slufs.

HOMESTAKE MINING COMPANY

P.O. BOX 98
GRANTS, NEW MEXICO
87020

File

March 14, 1988

Mr. Fred Humke
Industrial Permits Section (6 AEWP)
U.S. Environmental Protection Agency
Region VI
1445 Ross Ave.
Dallas, Texas 75202-2733

Re: NPDES Permit No. NM-0020389
Homestake Mining Company of California

Dear Mr. Humke:

This is to certify that Mr. Thomas G. White, General Manager, Homestake Mining Company of California, P.O. Box 98, Grants, New Mexico 87020 is duly authorized to sign all applications, reports, or information submitted in connection with the above referenced permit.

HOMESTAKE MINING COMPANY
By:

Adcock

Deus

ine Operations

EEK:ASW/bg1

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MAR 28 1988

6W-PS

PERMITS TO PUBLIC NOTICE ON MARCH 26, 1988

<u>PERMIT NO.</u>	<u>ACTION</u>	<u>APPLICANT NAME</u>	<u>EFFECTIVE DATE OF PROPOSED PERMITS</u>
NM0020389	REP	HOMESTAKE MINING CO.	MAY 6, 1988
NM0028215	REP	BOKUM RESOURCES CORPORATION	MAY 6, 1988

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

MAR 25 1988

CERTIFIED MAIL: RETURN RECEIPT REQUESTED (P 661 408 216)

REPLY TO: 6W-PS

Mr. Edward E. Kennedy
Director of Environmental Affairs
Homestake Mining Company
P.O. Box 98
Grants, New Mexico 87020

Re: Application to Discharge to Waters of the United States
Permit No. NM0020389

Dear Mr. Kennedy:

Enclosed is the public notice, fact sheet, and a copy of the permit which this Agency has drafted under the authority of the National Pollutant Discharge Elimination System. Please submit any written comments you may have to Ms. Ellen Caldwell (6W-PS) as stated in the enclosed public notice. A copy of the final permit will be mailed to you when the Agency has made a final permit decision.

any part of the permit, please
above address or telephone

yours,

Mudson, P.E.

Management Division (6W)

on

bcc: Humke (6W-PI)
Reading Files (6W-PS, 6W-P)

2/17/88:HUMKE(6W-PI):tn:T-83#7:#085

CONCURRENCES

SYMBOL	6W-PI	6W-P					
SURNAME	Huffman	Ferguson					
DATE	3-11-88	3-14-88					

Advertising Order Number 8T-3144-NNLX
U.S. Environmental Protection Agency
Public Notice of Draft NPDES Permit(s)

MARCH 26, 1988

This is to give notice that the U.S. Environmental Protection Agency, Region VI, has formulated a Draft Permit for the following facility (facilities) under the National Pollutant Discharge Elimination System. Development of the draft permit(s) was based on a preliminary staff review by EPA, Region VI, and consultation with the State of NEW MEXICO. The State of NEW MEXICO is currently reviewing the draft permit(s) for the purpose of certifying or denying certification of the permit(s). The permit(s) will become effective within 30 days after the close of the comment period unless:

a. The State of NEW MEXICO denies certification, or requests an extension for certification prior to that date.

b. Comments received prior to APRIL 26, 1988 warrant a public notice of EPA's final permit decision.

c. A public hearing is held requiring delay of the effective date.

EPA's contact person for submitting written comments, requesting information regarding the draft permit, and/or obtaining copies of the permit and the Statement of Basis or Fact Sheet is:

Ms. Ellen Caldwell
Permits Branch (6W-PS)
U.S. Environmental Protection Agency
1445 Ross Avenue
Dallas, Texas 75202-2733
(214) 655-7190

EPA's comments and public hearing procedures may be found at 40 CFR 124.10 and 124.12 (48 Federal Register 14264, April 1, 1983, as amended at 49 Federal Register 38051, September 26, 1984). The comment period during which written comments on the draft permit may be submitted extends for 30 days from the date of this Notice. During the comment period, any interested person may request a Public Hearing by filing a written request which must state the issues to be raised. A public hearing will be held when EPA finds a significant degree of public interest.

EPA will notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. A final permit decision means a final decision to issue, deny, modify, revoke or reissue, or terminate a permit. Any person may request an Evidentiary Hearing on the agency's final permit decision. However, the request must be submitted within 30 days of the date of the final permit decision and be in accordance with the requirements of 40 CFR 124.74. Any condition(s) contested in a request for an evidentiary hearing on an existing Source may be stayed if the request for a hearing is granted. If any condition(s) contested in a request for an evidentiary hearing are granted on a New Source, New Discharger, or Recommencing Discharger the applicant shall be without a permit.

Further information including the administrative record may be viewed at the above address between 8 a.m. and 4:30 p.m., Monday through Friday.

1. NPDES authorization to discharge to waters of the United States, Permit No. NM0020389.

The applicant's mailing address is: Homestake Mining Company
P.O. Box 98
Grants, New Mexico 87020

The discharge from this existing uranium mine is made into Arroyo del Puerto to San Mateo Creek in the Rio Grande Basin, a water of the United States classified for irrigation, limited warmwater fishery, livestock and wildlife watering and secondary contact recreation. The discharge is located on that water in the Ambrosia Lake mining area, approximately 25 miles north of Grants, in McKinley County, New Mexico. A fact sheet is available. Under the standard industrial classification (SIC) code 1094, the applicant's activities are the recovery of uranium from mine water by ion exchange.

The changes from the previously issued permit are:

1. Monitoring and reporting only is deleted for temperature, total molybdenum, total selenium, total vanadium, lead-210, polonium-210, barium and manganese.
 2. Biomonitoring is applied in accordance with the third round permitting policy.
2. NPDES authorization to discharge to waters of the United States, Permit No. NM0028215.

The applicant's mailing address is: Bokum Resources Corporation
P.O. Box 13958
Albuquerque, New Mexico 87192

The discharge from this existing uranium mine is made into an unnamed tributary of Canon de Seco to Salado Creek, a tributary to Rio Puerco, and thence to the Rio Grande, a water of the United States classified for irrigation, limited warmwater fishery, livestock and wildlife watering, and secondary contact recreation. The discharge is located on that water at the Marquez Mine, near Marquez, McKinley County, New Mexico. A fact sheet is available. Under the standard industrial classification (SIC) code 1094, the applicant's activities are the production of uranium ore.

The changes from the previously issued permit are:

1. Third round biomonitoring requirements are applied to the permit.
2. Monitoring and reporting only requirements are deleted for total molybdenum, total selenium, total vanadium, lead-210, barium and manganese.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VI

ALLIED BANK TOWER AT FOUNTAIN PLACE

1445 ROSS AVENUE

DALLAS, TEXAS 75202

February 17, 1988

FACT SHEET

for proposed National Pollutant Discharge Elimination System (NPDES)
Permit No. NM0020389 to discharge to waters of the United States.

Issuing office: U. S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202-2733

Applicant: Homestake Mining Company
P.O. Box 98
Grants, New Mexico 87020

1. The applicant currently operates this existing source uranium mine.
2. As described in the application, the plant site is located in McKinley County, New Mexico. Discharge is to Arroyo del Puerto to San Mateo Creek in Rio Grande Basin.
3. The known uses of the receiving waters are: irrigation, limited warmwater fishery, livestock and wildlife watering and secondary contact recreation.
4. Stream standards are: the general and specific stream standards are provided in "Water Quality Standards for Interstate and Intrastate Streams in New Mexico", New Mexico Water Quality Control Commission, February 15, 1985.
5. The following is a quantitative description of the discharge described in the application:

a. <u>Outfall</u>	<u>Flow</u>	<u>Avg/Daily (MGD)</u>	<u>Max/(MGD)</u>	<u>Min/(MGD)</u>	
	<u>Frequency</u>				
001	Continuous	0.54	1.0	N/A	

b. <u>Outfall</u>	<u>Temp. °F</u>	<u>Temp. °F</u>	<u>Temp. °F</u>	
	<u>Avg/Summer</u>	<u>Avg/Winter</u>	<u>Max</u>	<u>Min</u>
001	66.2	48.2	68.0	N/A

c. Outfall	Parameter	Effluent Characteristics	
		Daily Avg (mg/l)	Daily Max (mg/l)
001	Total Suspended Solids	N/A	N/A
001	Chemical Oxygen Demand	N/A	N/A
001	Radium 226 (dissolved)	N/A	N/A
001	Total Radium 226	N/A	16.6 pCi/l
001	Total Uranium	N/A	N/A
001	Total Zinc	N/A	0.25
001	pH	within the range of 7.3 to 8.6 S.U.	

6. On the basis of preliminary staff review, the Environmental Protection Agency, after consultation with the State of Texas, has made a tentative determination to issue a permit for the discharge described in the application.

7. The proposed effluent limitations for those pollutants proposed to be limited are as follows:

See attached draft permit.

8. A brief explanation follows of the express statutory or regulatory provision on which permit requirements are based, including appropriate supporting references to the Administrative Record required by 40 CFR 124.9:

- Present NPDES Permit No. NM0020389 issued to Homestake Mining Company on July 15, 1983.
- Reapplication No. NM0020389 from Homestake Mining Company.
- Water Quality Standards for Interstate and Intrastate Streams in New Mexico.
- Region VI biomonitoring policy for third round permits.

9. The following is an explanation of calculations or other necessary explanation of the derivation of specific effluent limitations and conditions, including a citation to the applicable effluent limitation guideline or performance standard provisions as required under 40 CFR 122.44 and 122.45 and reasons why these are applicable:

A. Effluent Limitations

Outfall 001

Total suspended solids limitations of 20 mg/l daily average and 30 mg/l daily maximum; chemical oxygen demand limitations of 100 mg/l daily average and 200 mg/l daily maximum; radium 226 (dissolved) limitations of 3 pCi/l daily average and 10 pCi/l daily maximum; total radium 226

limitations of 10 pCi/l daily average and 30 pCi/l daily maximum; total uranium limitations of 2.0 mg/l daily average and 4.0 mg/l daily maximum; and total zinc limitations of 0.5 mg/l daily average and 1.0 mg/l daily maximum are based on best available technology (BAT)/best conventional technology (BCT) as addressed in the present permit.

pH limitations within the ranged of 6.6 to 8.6 S.U. are continued based on the present permit limitations which were established by the New Mexico Environmental Improvement Division (NMEID) under New Mexico water quality standards.

B. Dilution Calculations

Based on the 7Q10 of zero in Arroyo del Puerto, a dilution of 100% is applied.

C. Instream Calculations

Ce = effluent concentration
Cr = downstream concentration

Parameter/mg/l	Ce	Cr	MCL	Chronic Human Health	Aquatic Biota	WQS
Total Radium 226	10 pCi/l	10 pCi/l	5 pCi/l	N/A	N/A	N/A
Total Zinc	0.25	0.25	N/A	N/A	0.047	N/A

Therefore, 1/month biomonitoring is applied.

D. THIRD ROUND OPTION

Based on information contained in the permit application, EPA has determined that there may be pollutants present in the effluent(s) which may have the potential to cause toxic conditions in the receiving stream. Section 101(a)(3) of the Clean Water Act states that "... it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited." In addition, EPA is required under 40 CFR Part 122.44(d)(1) to include conditions as necessary to achieve the States' water quality standards as established under Section 303 of the Clean Water Act. The State has established a narrative criteria which states:

"toxic substances such as, but not limited to, pesticides, herbicides, heavy metals, and organics, shall not be present in receiving streams to an extent detrimental to man or other organisms of direct or indirect commercial, recreational, or aesthetic value."

Whole effluent biomonitoring is the most direct measure of potential toxicity which incorporates the effects of synergism of effluent components and receiving stream water quality characteristics. It is the national policy of EPA to use toxicity tests to evaluate the potential toxic effects of a discharge upon a receiving water (49 Federal Register 9016-9019, March 9, 1984). The Region is now implementing their policy of March 11, 1987 in conformance with the regional strategy issued on April 1, 1987.

Biomonitoring of the effluent is thereby required as a condition of this permit to assess potential toxicity. The biomonitoring procedures stipulated as a condition of this permit are as follows:

<u>TOXICITY TESTS</u>	<u>FREQUENCY</u>
7-day <u>Ceriodaphnia dubia</u> survival and reproduction test (Method 1002.0)	1/month
7-day fathead minnow (<u>Pimephales promelas</u>) larval survival and growth test (Method 1000.0)	1/month

Toxicity tests shall be performed in accordance with protocols described in "Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms", EPA/600/4-85/014. The stipulated test species are indigenous to the geographic area of the facility; the use of these is consistent with the requirements of the State water quality standards. The biomonitoring frequency has been established to reflect the likelihood of ambient toxicity and to provide data representative of the toxic potential of the facility's discharge, in accordance with regulations promulgated at 40 CFR Part 122.48.

This permit shall be reopened to require further monitoring studies, and/or effluent limits if biomonitoring data show actual or potential ambient toxicity to be the result of the permittee's discharge to the receiving stream. Modification or revocation of the permit is subject to the provisions of 40 CFR Part 122.62. Accelerated or intensified toxicity testing may be required in accordance with Section 308 of the Clean Water Act.

10. The requested variance(s) N/A appear justified for the following reason(s):

N/A

11. The permit is in the process of certification by the State agency. A draft permit and draft public notice will be sent to the District Engineer, Corps of Engineers, and to the Regional Director of the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, prior to the publication of that notice.

12. The public notice describes the procedures for the formulation of final determinations.

HOMESTAKE MINING COMPANY

P.O. BOX 98
GRANTS, NEW MEXICO
87020

Permit File
Cy to: 6W-EA
File

January 13, 1989

CERTIFIED MAIL: P 562 229 616

Ms. Jayne Fontenot, Chief
Permits Issurance Section (6W-PS)
U.S. Environmental Protection Agency
Region VI
1445 Ross Avenue
Dallas, Texas 75202

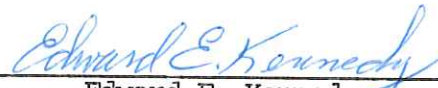
Re: NPDES Permit No. **NM0020389**
Homestake Mining Company of California

Dear Ms. Fontenot:

This is to certify that Mr. Thomas G. White, General Manager of Uranium Operations, Homestake Mining Company, P.O. Box 98, Grants, New Mexico 87020, is the duly authorized Principal Executive Officer responsible for the compliance of the conditions outlined within the above referenced permit. Mr. Edward E. Kennedy, at the same address, has the authority to sign the DMR's as Mr. White's Authorized Agent.



Thomas G. White
General Manager



Edward E. Kennedy
Director of Environmental
Affairs

Very truly yours,

HOMESTAKE MINING COMPANY
by:



Allen S. Winters
Vice-President, Mine Operations

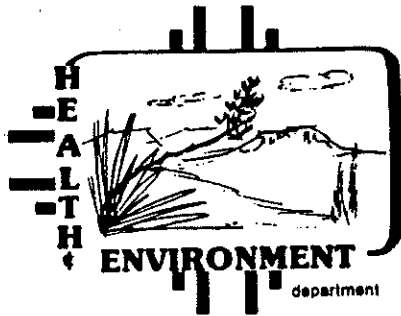
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Talbed with Mrs. Kennedy
mine still operating but no discharge
He will be late with reapphication



STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT DIVISION
P.O. Box 968, Santa Fe, New Mexico 87504-0968
(505) 984-0020

Russell F. Rhoades, MPH, Director

Onzd
TONEY ANAYA
GOVERNOR

ROBERT McNEILL
SECRETARY

ROBERT L. LOVATO, M.A.P.A.
DEPUTY SECRETARY

JOSEPH F. JOHNSON
DEPUTY SECRETARY

July 14, 1983

Robert Hanneschlager
Chief Permits Branch (6W-P)
U.S. Environmental Protection Agency
1201 Elm Street
Dallas, TX 75270

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dear Mr. Hanneschlager:

The Water Pollution Control Bureau is requesting that new or reissued National Pollutant Discharge Elimination System (NPDES) permits for industrial discharges located in New Mexico reflect the limits of Section 2-101 of the New Mexico Water Quality Control Commission Regulations (as Amended Through September 20, 1982). Section 2-101 contains effluent limitations for parameters which include Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Fecal Coliform Bacteria, and pH. Specifically, the Bureau is requesting that these parameters be included in draft permits when appropriate (i.e., the limitations for fecal coliform bacteria and bio-chemical oxygen demand should be included for discharges of sanitary (treated sewage) wastewater). The pH requirements (6.6 - 8.6 SU) should be included in all draft permits. In addition, the Bureau would like to reiterate its request for inclusion of Sections 1-102F (Hazardous Substances) and 1-102G (Radioactivity) of the Water Quality Standards For Interstate and Intrastate Streams in New Mexico in NPDES permits issued to uranium mines.

Please feel free to contact me if you have any questions.

Sincerely,

Anthony Drypolcher
Program Manager, Surface Water Section

AD:md

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JUL 29 1983

GW-PS

15 JUN 1983

Mr. Charles Nylander
Program Manager
Surface Water Section
Water Pollution Control Bureau
New Mexico Environmental Improvement Division
P.O. Box 968
Santa Fe, New Mexico 87503

Re: Conditions Required by NMEID for Certification of
Industrial NPDES Permits

Dear Mr. Nylander:

As we have discussed with Cathy Sisneros of your staff, we request that your Agency provide us with a letter which specifies basic conditions of certification which are required by NMEID for certification of industrial NPDES permits.

At a minimum, this should include your requirements for the application of Sections 2-101 and 2-102 of New Mexico Water Quality Control Commission regulations as applied to COD, BOD and radioactivity limitations, and requirements for fecal coliform and pH limitations.

Please also address any other standard conditions which NMEID may require for certification of NPDES industrial permits. As you know, some of these requirements are currently being questioned and challenged by permittees.

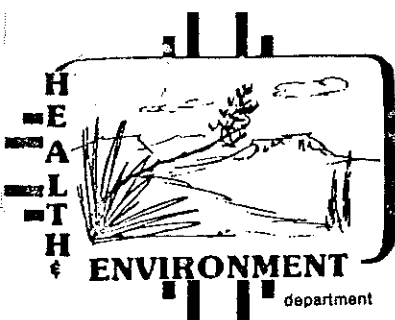
Please advise us if additional clarification is needed.

Sincerely,

Bob Hanneschlager, Chief
Permits Branch (6W-P)

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(6W-PI)
Cabra



Humke

STATE OF NEW MEXICO

ENVIRONMENTAL IMPROVEMENT DIVISION
P.O. Box 968, Santa Fe, New Mexico 87503
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Thomas E. Baca, M.P.H., Director

Bruce King
GOVERNOR

George S. Goldstein, Ph.D.
SECRETARY

Larry J. Gordon, M.S., M.P.H.
DEPUTY SECRETARY

February 29, 1980

Mr. James Stiebing, Chief
Engineering and Evaluation Branch 6AEE
U.S. Environmental Protection Agency
1201 Elm Street
Dallas, Texas 75270

Dear Mr. Stiebing:

In order to allow consistency between NPDES permits issued in New Mexico and Part 2 of the New Mexico Water Quality Control Commission regulations, (two copies are enclosed) we are requesting that all new or reissued 'New Mexico' NPDES permits reflect the limits of Section 2-101 of the Commission regulations or Section 2-102 for community sewerage systems in the middle Rio Grande segment.

For permits that will have fecal coliform colonies as a parameter, we would request both the 30-day average and the 7-day average to be 500 colonies per 100 mls.

For permits that will have a pH parameter, we would request the range to be from 6.6 to 8.6 Standard Units.

For permits that will have a Chemical Oxygen Demand (COD) parameter, we would request both the 30-day average and the 7-day average to be 125 mg/l; community sewerage systems under Section 2-102; Rio Grande Basin, would have both a 30-day average and a 7-day average COD limit of 80 mg/l.

If you have any questions please contact me.

Sincerely,

Charles Nylander
Charles Nylander
Program Manager, Surface Water Unit

CN:lm

Enclosure

cc: Troy Marceleno, 6AEEMEC, USEPA
Fred Humke, 6AEENME, SUEPA ✓
Frank Whitehurst, 6AEENME, USEPA

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6AEP

Humble

BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.

In the Matter of:)	
)	NPDES Appeal 84-5
Homestake Mining Company,)	
)	
Permittee)	
)	
NPDES Permit No. NM0020389)	
)	

ORDER DENYING PETITION FOR REVIEW

Homestake Mining Company (Homestake) petitions the Administrator for review of EPA Region VI's denial of its request for an evidentiary hearing on the above-referenced NPDES permit. The Chief Judicial Officer, as the Administrator's delegatee, has the authority to decide this petition pursuant to 40 CFR §124.91.

A petition for review is not normally granted unless the Region's decision is clearly erroneous or involves an exercise of discretion or policy that is important and therefore should be reviewed as a discretionary matter. Boston Edison Company, NPDES Appeal No. 78-7, August 28, 1978; Kerr-McGee Nuclear Corporation (Church Rock Facility), NPDES Appeal No. 83-2, July 21, 1983. The regulations do not confer an automatic right of review. The burden of demonstrating that review should be granted is on the petitioner. As discussed below, Homestake has failed to meet its burden here. Accordingly, its petition for review is denied.

Homestake raises three arguments in its petition. It argues that it should not be required to obtain an NPDES permit since EPA does not have jurisdiction over its discharges.^{1/} Alternatively, Homestake argues that if it is required to have a permit, the Region erroneously included certain requirements from the State certification in such permit. Finally, Homestake argues that certain conditions in the permit should have been modified to reflect proposed changes in the NPDES permit regulations. Such changes were proposed as a result of a settlement agreement in NRDC v. EPA, No. 80-1607 (D.C. Cir., filed June 2, 1980).^{2/} Homestake's arguments are discussed below in turn.

The issue of whether the Agency has jurisdiction over Homestake's discharges was resolved in United Nuclear-Homestake Partners, NPDES Appeal No. 83-6, Order Denying Petition for Review, dated August 5, 1983. (Homestake succeeded to United Nuclear-Homestake Partner's interest.) In United Nuclear-Homestake Partners I held that the arroyo (Arroyo del Puerto) into which the company discharged its effluent was a "water of the United States" -- despite UNHP's arguments to the contrary -- and thus EPA had the authority under the Clean Water Act to

1/ Homestake discharges into Arroyo del Puerto, which it characterizes as a "normally dry arroyo" except for intermittent precipitation and the discharges themselves. See Petition for Review, p. 1; Request for Evidentiary Hearing p. 4.

2/ The NPDES permit regulations were challenged in court by both industry and public interest groups. The cases were consolidated into a single action in the United States Court of Appeals, D.C. Circuit (NRDC v. EPA, No. 80-1607). EPA entered into a settlement agreement with industry petitioners and agreed to propose modifications to the regulations.

issue the NPDES permit being contested in that case. That holding was affirmed by the U.S. Court of Appeals for the tenth circuit in Quivira Mining Company and Homestake Mining Company v. EPA, 765 F.2d 126 (1985), with the Supreme Court recently denying certiorari in the case, 106 S.Ct. 791(1986).

In its petition, Homestake challenges the Agency's regulatory authority over its discharges by making the same "dry arroyo" or "ephemeral stream" arguments as UNHP made in the earlier case. The permit currently being contested here by Homestake is for discharges from the same uranium mine to the same arroyo (Arroyo del Puerto) as involved in my earlier UNHP decision. Indeed, the Regional Administrator relied (in part) on my earlier holding in UNHP when he denied Homestake's request for an evidentiary hearing. In its petition Homestake offers no new facts that would cause me to depart from my earlier decision holding that Arroyo del Puerto is, for purposes of the Clean Water Act, a "water of the United States." Thus Homestake is required to obtain an NPDES permit for discharges from its uranium mine to the Arroyo.

Secondly, Homestake challenges certain requirements imposed in its permit through the State certification process, claiming that the challenged requirements are unnecessary to assure compliance with the Clean Water Act. ^{3/} It is well-

^{3/} The requirements in question certified by the State are monitoring requirements for Polonium-210, Barium, Manganese, and Lead-210. Homestake also challenged insertion into its permit of certain State-certified water quality standards which Homestake did not specifically identify for the appeals record.

settled that the Agency has no jurisdiction to review state certified requirements that a permittee considers unnecessary (or more stringent than necessary) to assure compliance with the Clean Water Act. ^{4/}

40 CFR §124.55 states:

Effect of State Certification

- (e) Review and appeals of limitations and conditions attributable to State certification shall be made through applicable procedures of the State and may not be made through the procedures of this part. [i.e., Part 124].

Courts have consistently agreed with this, "ruling that the proper forum to review the appropriateness of a state's certification is the state court, and that federal courts and agencies are without authority to review the validity of requirements imposed under state law or in a state's certification. See United States Steel Corporation v. Train, 556 F.2d 822, 837-839

^{4/} Stated another way, the Agency may not "look behind" a state certification. "Limitations contained in a State certification must be included in an NPDES permit." EPA, Decision of the General Counsel No. 58 (March 2, 1977); see also Decision of the General Counsel No. 44 (June 22, 1976). However, it should be noted that the Agency must disregard state-certified limitations or requirements that are less stringent than those contained in the permit. 40 CFR §124.55(c)(1985). (That is not the situation here.) More stringent requirements are a different matter. The Clean Water Act preserves a state's right to enact its own anti-pollution measures even if they are more stringent than necessary to comply with the CWA. CWA §510. Roosevelt-Campobello International Park Commission, 684 F.2d 1041, 1056 (1982). (Indeed, states are free to adopt and enforce anti-pollution requirements which "force technology . . . even at the cost of economic and social dislocations caused by plant closings." United States Steel Corporation v. EPA, 556 F.2d 822 (7th Cir. 1977). See also EPA v. California ex rel

(next page)

and n. 22 (7th Cir. 1977); Lake Erie Alliance v. U.S. Army Corps of Engineers, 526 F.Supp 1063, 1074 (W.D. Pa. 1981); Mobil Oil Corp v. Kelley, 426 F.Supp 230, 234-35 (S.D. Ala. 1970)."
Roosevelt Campobello International Park Commission v. EPA, 684 F.2d 1041, 1056 (1982). Accordingly, the Region properly denied Homestake's request for an evidentiary hearing (which it made pursuant to Part 124, i.e., 40 CFR §124.74) to review the "appropriateness of the State certification." The proper forum for such review is at the State level. ^{5/}

Finally, Homestake argues that the Regional Administrator should have incorporated certain proposed revisions to the NPDES regulations in its permit. In that regard, in its request for an evidentiary hearing, Homestake stated:

The . . . NPDES permit should be written in such a way as to incorporate the proposed changes

(Footnote No. 4 cont'd)

State Water Resources Control Board, 426 U.S. 200, 219, 96 S.Ct 2022, 2031, 48 L.Ed 2d 578 (1976) and State of Minnesota v. Hoffman, 543 F.2d 1198, 1208 (8th Cir. 1976)). And, a state may certify (indeed, a state must certify) any such more stringent limitations or requirements for inclusion in the NPDES permit. CWA §401(d).

^{5/} In an additional argument related to state certification, Homestake argues that the Region erred by including a pH limit of between 6.6 and 8.6 in the permit because the State did not impose that limit (nor indeed any pH limit) in its certification. While technically it is true that the State certification specifies no pH limitation, it is apparent from the record that a pH limit of between 6.6 and 8.6 is a State requirement and, like other State requirements, must be included in an EPA issued

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to Part 122, 124 and 125 of the consolidated permit regulations, pursuant to the settlement agreement entered into by EPA and industry petitioners in the consolidated permit regulations litigation (NRDC v. EPA and consolidated cases No. 80-1607 [D.C. Cir. filed June 2, 1980]). These changes are described by EPA as "reducing the regulatory burdens imposed on permittees" 47 Fed. Reg. p. 52072. Nov. 18, 1982. At a minimum, Part II, Standard Conditions for NPDES Permits should be amended to include in Section A a new paragraph which would provide for modification of the permit in conformance with final rules under the settlement. (Emphasis added.)

Homestake seems to be making two separate claims. First, Homestake claims that the changes to the NPDES regulations proposed as a result of the Settlement Agreement in NRDC v. EPA should be incorporated into its final permit despite the fact that, at the time its final permit was issued, the regulations containing such changes were still in their proposed form and had not yet been promulgated as final rules. ^{6/} Secondly, Homestake seems to be claiming that its permit should contain a

(Footnote No. 5 cont'd)

permit, CWA §301(b)(1)(C), regardless of whether or not it is certified by the State. See letter from Anthony Drypolcher, Environmental Improvement Division, Health Environment Department, State of New Mexico dated July 14, 1983, in reply to request for specification of basic conditions of certification required by New Mexico from Robert Hannesschlager, U.S. EPA; see also Fact Sheet pp. 2 and 3. As with any other state requirement, the validity of the requirement itself is only subject to challenge in the State courts.

6/ Homestake seems to be requesting incorporation in its permit of all the changes (which would have the effect of "reducing the regulatory burdens imposed" on it) proposed as a result of the NRDC settlement agreement. However, in its request for an evidentiary hearing it specifically identified only a limited number of proposed changes.

clause providing for the modification of its permit as the proposed rules become final. Neither of these claims has merit.

With regard to Homestake's claim that the proposed changes should have been incorporated into its permit, the Regional Administrator explained that "[t]he permit is drafted in accordance with the regulations] as . . . promulgated [when the permit was issued.]" Response to Comments at 2. I agree. Permit terms and conditions cannot be based on proposed rules since they are tentative and may change before being promulgated in final form. This point was clearly made in State of Alabama v. EPA, 557 F.2d 1101, 1110 (5th Cir. 1977). ^{7/} In that case the Court stated:

"We affirm EPA's conclusion that the appropriate BPT limitations to be applied in a permit are those in effect at the time of initial permit issuance. Permit review proceedings may consume many months during which standards and guidelines might change more than once. Until proposed regulations withstand the rigors of the full administrative process, they are too tentative to govern the actions of regulated companies (Emphasis added). 8/

7/ See also 40 CFR §122.43(b)(1)(1985).

8/ The Court continued: "Moreover, ongoing [permitting] proceedings should not be interrupted when proposed regulations become final." Nevertheless, EPA's current procedures do allow for the interruption of permitting proceedings when proposed regulations become final during the course of such proceedings and a party to the proceedings requests permit modification based upon the new regulations. In that regard 40 CFR §124.86(c) (1986) states:

[A]ny party may file with the Presiding Officer a motion seeking to apply to the permit any regulatory . . . provisions issued or made available after the

(next page)

Clearly then Homestake was not entitled to the benefit of any regulatory changes that were merely proposed at the time the Regional Administrator issued the final permit.

(Footnote No. 8 cont'd)

issuance of the permit. . . . The Presiding Officer may grant a motion to apply a new regulatory requirement when appropriate to carry out the purpose of CWA, and when no party would be unduly prejudiced thereby.

It should be noted that 40 CFR §124.86(c)(1986) modifies EPA's decision in U.S. Pipe and Foundry Company, NPDES Appeal No. 75-4, Decision of the Administrator (October 10, 1975), which states:

[T]o allow permit limitations and conditions to change according to a "floating" standard or guideline during the pendency of a permit review proceeding would be highly disruptive and counterproductive. . . . I recognize that permit review proceedings may consume many months, during which standards and guidelines for determining permit conditions may change (or take on greater specificity). . . .

[T]he Administrator's review of the original action taken by the Regional Administrator should be based on the standards and guidelines in existence at the time the original action was taken, and thus, to that extent, finality must be accorded the original action taken. . . . As a matter of policy, EPA should do its utmost to avoid the problems associated with the "moving target" criticism so often asserted by those subject to the regulatory requirements of this and other government agencies. The standards and guidelines for the preparation of NPDES permits must be fixed at some point in time so permit terms can become final and pollution abatement can proceed. I believe the proper point in time for fixing applicable NPDES standards and guidelines is when the Regional Administrator initially issues a final permit.

As stated in the preamble to 40 CFR §124.86(c)

EPA has preserved the general rule enunciated in the U.S. Pipe decision, but has modified it to allow [the Presiding Officer] to apply new regulations where to do so would not unduly prejudice any party. 44 Fed. Reg. 32887 (June 7, 1979).

Homestake also claims that it is entitled to insertion of a clause in its permit granting it the right to modify its permit as the proposed rules (i.e., the rules proposed as a result of the NRDC v. EPA Settlement Agreement) become final.^{9/} Homestake does not mention that any condition or limitation should be attached to such right. This unlimited right that Homestake requests would conflict with 40 CFR §122.62(18)(1985), which allows for permit modification in accord with permit regulations issued under the NRDC v. EPA Settlement Agreement only in limited circumstances. In that regard 40 CFR §122.62(18)(1985) provides for permit modification when, among other things,

[T]he permit becomes final and effective on or after March 9, 1982, and the permittee applies for the modification no later than January 24, 1985, if the permittee shows good cause in its request and that it qualifies for the modification, to conform to changes respecting . . . regulations issued under [the NRDC v. EPA Settlement Agreement]. . . .

With regard to the requirement that the permittee show "good cause" for the requested modification, the preamble to the proposed version of 40 CFR §122.62(18) states:

The changes in today's proposal do not affect or modify existing permits. Permittees must comply with the terms of their permits, even if those terms differ from the requirements in the regulations. See CWA, §402(h). However, in order to prevent unneces-

^{9/} Since the time Homestake's permit was issued EPA has issued final regulations with respect to all of the regulations proposed to be modified pursuant to the Settlement Agreement. See 49 Fed. Reg. 37998 (September 26, 1984).

sary administrative hearings and litigation during rulemaking proceedings on these proposals, EPA has agreed to propose a new §122.15(a)(5)(XIV) allowing NPDES permits that became final after March 9, 1982, to be modified to conform to any final rule adopted under this Settlement Agreement for §§122.60(g)(2)(ii) (bypass), 122.63(b) (actual production), 122.83(c) (total metals), 122.65 (discharge into POTWs, wells, or by land disposal). A permittee would be required to demonstrate that it qualifies for the modification and that good cause exists to modify the permit. The good cause requirement calls for the permittee to show something more than that it qualifies for the modification since such a showing must be made in any modification request. For example, the permittee might show good cause by demonstrating that the modification would result in cost savings, reduce energy consumption, allow the use of simpler or more reliable control technologies, or otherwise significantly alleviate the burden imposed by its current permit terms and conditions, including permit limits. (Emphasis added.) 47 Fed. Reg. 52072, 520084 (November 18, 1982).

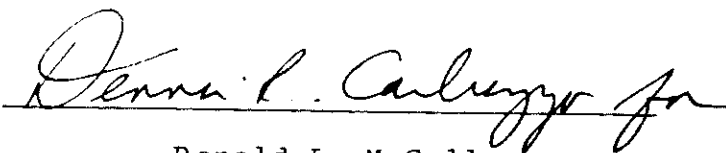
Insertion of a permit clause (or paragraph) allowing Homestake to modify its permit in accordance with final rules promulgated as a result of the NRDC Settlement Agreement, without reference to the requirements and limitations of §122.62(18) (e.g., the requirement that the permittee show "good cause" for the requested modification) would be a subversion of that section. Therefore, Homestake's claim that such a clause should be inserted into its permit is rejected.^{10/}

^{10/} The clause is also unnecessary to the extent any of the modifications qualify as "minor" pursuant to §122.63(f), i.e., the "Minor modification of permits" section, since Homestake would be entitled to such modifications under §122.63(f)'s streamlined minor modifications procedures without inserting the clause in the permit. See 47 Fed. Reg. 52072, 52085 (November 18, 1982).

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For all the foregoing reasons Homestake has not shown that the Regional Administrator's decision denying its request for an evidentiary hearing is clearly erroneous or involves a discretionary matter that I should review. 40 CFR §124.91. Accordingly, the petition for review is denied.

So ordered.



Ronald L. McCallum
Chief Judicial Officer

Dated: MAY 19 1986

(Footnote No. 9 cont'd)

More importantly, nothing in this Order should be read as precluding Homestake from applying for permit modification under 40 CFR §122.62(18). Indeed, the Region is directed to provide Homestake such an opportunity. Pursuant to §122.62(18)'s requirements, Homestake's permit was issued after March 9, 1982, and its request for an evidentiary hearing on the final permit, which was filed before January 24, 1985, can be construed as an application for modification of its permit "to conform to changes respecting the regulations . . . issued under [the NRDC v. EPA settlement agreement]" (See Request for Evidentiary Hearing pp. 9, 10). However, its Request does not contain the good cause showing required by §122.62(18). This omission may be attributable to the fact that well before January 24, 1985, to the present, Homestake's focus has been on 40 CFR §§124.74 (Requests for Evidentiary Hearing) and 124.91 (Appeal to Administrator) as a means of incorporating the "NRDC v. EPA Settlement Agreement rule changes" into its permit, and, understandably Homestake failed to focus on the modification procedures contained in §122.62(18) (including the necessity to make the "good cause" showing required under that section) as an alternative means of achieving that same end.

Accordingly, in an effort to be fair, the Region is directed to allow Homestake a reasonable period of time to make the good cause showing required under §122.62(18) despite the running of the January 24, 1985 deadline set forth in §122.62(18).

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Denying Petition for Review In the matter of Homestake Mining Company, NPDES Appeal No.84-5, were mailed to the following:

By 1st class mail,
postage prepaid:

Peter J. Nickles
Richard A. Meserve
Covington & Burling
1201 Pennsylvania Avenue, NW.
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Judy Grady
Regional Hearing Clerk
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Dallas, TX 57270

Eileen J. Barnhardt

Eileen J. Barnhardt
Secretary to the Chief
Judicial Officer

Dated: MAY 19 1986